



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R6-ES-2023-0203; FXES11130600000-223-FF06E00000]

Endangered and Threatened Wildlife and Plants; Establishment of an Experimental Population of the Grizzly Bear in the Bitterroot Ecosystem of the States of Idaho and Montana; Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of intent, announcement of public meetings, and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare an environmental impact statement (EIS) under the National Environmental Policy Act of 1969, as amended, to evaluate the potential environmental impacts of restoring the grizzly bear (*Ursus arctos horribilis*) to the Bitterroot Ecosystem (BE), a portion of the species' historical range, in Montana and Idaho. We previously issued a final EIS, record of decision, and final rule under section 10(j) of the Endangered Species Act of 1973, as amended, to reintroduce grizzly bears to the BE as a nonessential experimental population. However, conditions have changed, so we intend to reevaluate a range of options to restore the grizzly bear to the BE during the development of a new EIS. We invite input from other Federal and State agencies, Tribes, nongovernmental organizations, private-sector businesses, and members of the public on the scope of the EIS, alternatives to our proposed approaches for assisting in the restoration of the grizzly bear in the BE, and the pertinent issues that we should address in the EIS. We also invite the public and interested parties to attend virtual public scoping meetings.

DATES: *Comment submission:* We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

Public scoping meetings: We will host at least two virtual public scoping meetings to share information regarding the development of the draft EIS and allow the public to ask questions regarding the scope of issues and the proposed alternatives. We will announce the dates, times, and details of these virtual public scoping meetings through local and regional media, press releases, emails, social media, and on our website at <https://www.fws.gov/bitterrooteis>.

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R6-ES-2023-0203, which is the docket number for this action. Then, click on the Search button. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R6-ES-2023-0203, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Information Requested**, below, for more information).

Availability of supporting materials: Supporting materials, such as the previous final EIS (Service 2000a, entire), the previous record of decision (ROD) (Service 2000b, entire), and the species status assessment report (Service 2023, entire), are available on the Service’s website at <https://www.fws.gov/bitterrooteis> and at

<https://www.regulations.gov> at Docket No. FWS-R6-ES-2023-0203.

Public scoping meetings: We will host at least two virtual public scoping meetings to share information regarding the development of the draft EIS and allow the public to ask questions regarding the scope of issues and the proposed alternatives. Although we will not solicit oral comments at these virtual public meetings, written comments may be submitted at any time during the scoping process. See *Comment submission*, above, for information on how to submit comments. We will announce the details regarding how to participate in these virtual public scoping meetings through local and regional media, press releases, emails, social media, and on our website at <https://www.fws.gov/bitterrooteis>.

FOR FURTHER INFORMATION CONTACT: Hilary Cooley, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, Grizzly Bear Recovery Office, University Hall, Room #309, University of Montana, Missoula, MT 59812; telephone 406–243–4903. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of contact in the United States.

SUPPLEMENTARY INFORMATION:

We announce our intent to prepare an environmental impact statement (EIS) to evaluate a range of alternatives to restore the grizzly bear to the Bitterroot Ecosystem (BE) in Montana and Idaho. Alternatives that may be considered include implementing the existing nonessential experimental population (NEP) regulations in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.84(l) (see 65 FR 69624, November 17, 2000), removing the BE NEP regulations from the CFR with or without additional management to aid natural recolonization, or designating a new experimental population

for the BE under section 10(j) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). This notification of intent initiates the scoping process, which informs the development of the EIS.

Information Requested

In accordance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), we are conducting a public scoping process to invite input on the range of alternatives and issues to be addressed during the preparation of the EIS. Scoping is an early and open process for determining the scope of issues to be addressed and identifying issues that should be considered in selecting an alternative for implementation. Therefore, we request comments or information from other government agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this action. We particularly seek comments concerning:

- (1) The alternatives that we should consider for restoring grizzly bears to the BE;
- (2) Other possible action alternatives that we should consider that meet our purpose and need and are technically and economically feasible;
- (3) Potential effects that the preliminary action alternatives could have on other aspects of the human environment, including ecological, aesthetic, historic, cultural, economic, social, environmental justice, or health effects;
- (4) Approaches for managing grizzly bears in the BE, particularly regarding potential conflicts with human activities;
- (5) Considerations for grizzly bear connectivity to the BE; and
- (6) Other information relevant to grizzly bear restoration in the BE and its impacts on the human environment.

We will consider the comments that we receive during the development of the draft EIS. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial

information you include. Submissions merely stating support for, or opposition to, the action under consideration without providing supporting information do not provide substantial information necessary to support a determination. You may submit your comments and materials by one of the methods listed in **ADDRESSES**, above. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation, will be available for public inspection on <https://www.regulations.gov>.

Background

The grizzly bear is currently listed as a threatened species in the lower-48 States under the ESA. The BE is one of six recovery zones identified in the 1993 Grizzly Bear Recovery Plan (USFWS 1993, entire). A recovery zone is an area large enough and of sufficient habitat quality to support a recovered grizzly bear population. The goal of the recovery plan is to reduce threats to the grizzly bear in each ecosystem so that the species can be considered for delisting due to recovery (USFWS 1993, p. 33). The grizzly bear is functionally extirpated in the BE, although there have been recent instances of individual grizzly bears dispersing into the ecosystem. Restoring a viable grizzly bear population to the BE would support the overall recovery of the grizzly bear in the lower-48 States.

Grizzly bears once ranged throughout most of the Western United States. However, grizzly bear abundance and distribution were greatly diminished by excessive human-caused mortality and loss of habitat. Since 1975, grizzly bear populations have

increased, and the species' range has expanded, in the Northern Continental Divide, Greater Yellowstone, Cabinet-Yaak, and Selkirk ecosystems. Expansion of the abundance and distribution of the species increases the redundancy, representation, and resiliency of grizzly bears within the lower-48 States and furthers conservation of the species. Our species status assessment provides a full account of the life history, ecology, range, and historical and current distribution of grizzly bears in the lower-48 States (Service 2023, entire).

The BE is one of the largest contiguous blocks of federally managed land in the lower-48 States. The BE contains multiple wilderness areas, which make up the largest block of wilderness habitat in the Rocky Mountains south of Canada. Grizzly bear recovery requires large blocks of relatively undisturbed land and remote areas away from human disturbance. Due to its large wilderness areas, the BE offers favorable conditions to restore a healthy population of grizzly bears and to improve the long-term survival and recovery of grizzly bears in the lower-48 States.

In November 2000, we released a final EIS (Service 2000a, entire), a record of decision (ROD) (Service 2000b, entire), and a final rule under section 10(j) of the ESA (65 FR 69624, November 17, 2000) to reintroduce grizzly bears into the BE as an NEP. The ROD described that grizzly bears would be restored to the BE and that their management would be guided by recommendations from a citizen management committee (Service 2000b, entire). In 2001, we published a notice of intent proposing to reevaluate our ROD and select the "no action" alternative as the preferred alternative (66 FR 33623, June 22, 2001) and a proposed rule to remove the section 10(j) designation for the BE and the accompanying regulations in 50 CFR 17.84(l) (66 FR 33620, June 22, 2001). However, we never finalized these proposals, and the NEP designation for the BE and the associated regulations remain in place. Additionally, we did not take any action to implement the ROD associated with the NEP designation; specifically, we did not

reintroduce grizzly bears to the BE, and we did not establish a citizen management committee.

In November 2021, the Alliance for the Wild Rockies and Native Ecosystems Council filed a lawsuit alleging that we failed to comply with our 2000 final rule and ROD to designate an NEP in the BE and unreasonably delayed completing our 2001 proposed rulemaking to rescind the experimental population designation, in violation of NEPA and the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*). *AWR et al. v. Cooley et al.*, No. 9:21-cv-00136-DWM (D. Mont.). On March 15, 2023, the district court ruled that the Service unreasonably delayed implementing nondiscretionary actions in our ROD (Service 2000b, entire), in violation of NEPA and the APA. The court ordered the Service to prepare a supplemental EIS and, if warranted, a new ROD and final rule under section 10(j) of the ESA. On April 26, 2023, the court issued an order approving the Service's proposal to complete a new final EIS and ROD within 43 months from the court's order (November 26, 2026).

Given the change in circumstances since our 2000 ROD (i.e., more observations of grizzly bears naturally dispersing into the BE), and in response to the court's order, we are now taking a fresh look at a strategy for supporting restoration of grizzly bears in the BE.

NEPA Analysis of Section 10 Actions

NEPA requires Federal agencies to undertake an assessment of environmental effects of any proposed action prior to making a final decision and implementing the decision. NEPA also established the Council on Environmental Quality (CEQ), which issued regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Service has regulatory authority under the ESA to manage the conservation and recovery of federally listed species, including creating rules and regulations and permitting legitimate activities that would otherwise be prohibited by the

ESA. Development of a section 10(j) rule under the ESA is a Federal action requiring review under NEPA.

Consistent with CEQ guidance for implementing NEPA, we intend to complete an EIS to consider approaches to restore the grizzly bear to the BE. The EIS will address the potential environmental impacts of a range of reasonable alternatives (including rulemaking actions) under section 10 of the ESA. The potential environmental impacts assessed in the EIS could include the effects on grizzly bears from management measures; effects on other environmental resources such as other federally listed species and cultural and Tribal resources; potential socioeconomic effects, including impacts on economic activities such as tourism and agriculture; and effects on a range of other resources identified through internal and external scoping. We will address our compliance with other applicable authorities in our NEPA review.

Purpose and Need for Agency Action

The purpose of our action is to restore a grizzly bear population to the BE that: is demographically viable; is well distributed throughout the BE; can increase and sustain itself at a recovered level; is protected by regulations, policies, or guidelines that (a) ensure grizzly bears and their habitats maintain long-term viability and connectivity and (b) provide management flexibilities to foster human social tolerance; and contributes to rangewide recovery of grizzly bears in the lower-48 States.

This action is needed to comply with the April 26, 2023, order in *AWR et al. v. Cooley et al.*, No. 9:21-cv-00136-DWM (D. Mont.). This action is also needed because the BE, one of six ecosystems identified for the recovery of the grizzly bear in the lower-48 States (USFWS 1993, entire), is functionally extirpated. Although we previously decided to reintroduce grizzly bears into the BE (Service 2000b, entire), we have not implemented that decision. Since designating the NEP in 2000, we have observed individual bears from other ecosystems dispersing through the BE and adjacent areas

with greater regularity, particularly in the past several years. We now anticipate that a population of grizzly bears (defined as two or more breeding females or one female with two consecutive litters) may become established in the BE through natural recolonization in the next 15 to 20 years.

Preliminary Alternatives

During the development of the draft EIS, we will consider a range of reasonable alternatives, including a no action, a proposed action, and preliminary alternatives. Our proposed action is to restore grizzly bears in the BE. Potential preliminary alternatives will include the following approaches: active reintroduction with or without designating a new experimental population in the BE, actions to support natural recolonization, actions to facilitate connectivity, or repealing or revising the existing NEP designation. These approaches may be considered separately or in any combination in the EIS.

Under our preliminary no action alternative, the status quo of current grizzly bear management would continue as currently implemented. We would not pursue reintroduction or changes to current management practices.

Summary of Potential Expected Impacts

We expect that the alternatives could potentially restore a grizzly bear population to the BE with varying success and in varying timeframes. Potential impacts from implementing the alternatives may include environmental impacts on fish and wildlife (including grizzly bears), wilderness areas, visitor use and recreational experience, public and employee safety, socioeconomics, and Tribal cultural and related resources. We intend to explore these and other potential expected impacts during the development of the draft EIS.

Anticipated Permits and Authorizations

We will comply with the ESA to evaluate potential impacts to threatened and endangered species. We will fulfill the public involvement requirements under the

National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). Information about historic and cultural resources within the area potentially affected by the alternatives will assist us in identifying and evaluating impacts to such resources and consulting with affected Indian Tribes and the State Historic Preservation Officer(s) on the potential for adverse effects.

Anticipated Schedule for the EIS

We expect to make the draft EIS available for public review and comment before the end of 2025. After public review and comment of the draft, we expect to make the final EIS available to the public in the fall of 2026. We then expect to issue a ROD by November 2026, pursuant to a court-ordered timeline, and if applicable, would issue a subsequent rulemaking under section 10(j) of the ESA soon after.

Responsibilities to Tribes

The Service has unique responsibilities to Tribes, including under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), American Indian Religious Freedom Act (42 U.S.C. 1996), Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), and Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb *et seq.*); Executive Order 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996); Joint Secretarial Order 3403, Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (November 15, 2021) and Secretarial Order 3206, American Indian Tribal Rights, Federal Tribal Trust Responsibilities, and the ESA (June 5, 1997); Director's Order 227, Fulfilling the Trust Responsibility to Tribes and the Native Hawaiian Community, and Other Obligations to Alaska Native Corporations and Alaska Native Organizations, in the Stewardship of Federal Lands and Waters; and the Service's Native American Policy (510 FW 1).

We apply the term "Tribal" or "Tribe(s)" generally to federally recognized Tribes and Alaska Native Tribal entities. The Service will separately consult with Tribes on the

proposals set forth in this document. We will also ensure that those Tribes wishing to engage directly in the NEPA process will have the opportunity to do so. As part of this process, we will protect the confidential nature of any consultations and other communications we have with Tribes, to the extent permitted by the Freedom of Information Act and other laws.

References

A list of the references cited in this document is available at <https://www.regulations.gov> in Docket No. FWS-R6-ES-2023-0203.

Authors

The primary authors of this document are the staff members of the Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authorities for this action are the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Anna Muñoz,
Deputy Regional Director,
U.S. Fish and Wildlife Service.